

1 Hon. Ronald B. Leighton
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 ALLSTATE INSURANCE COMPANY,
12 ALLSTATE PROPERTY & CASUALTY
13 INSURANCE COMPANY, ALLSTATE
14 INDEMNITY COMPANY, and ALLSTATE
15 FIRE & CASUALTY INSURANCE
16 COMPANY,

17 Plaintiffs,

18 v.

19 TACOMA THERAPY, INC., TACOMA
20 REHABILITATION THERAPY, INC., P.S.,
21 ANDREW JACOBS, MELANIE JACOBS,
22 NANDY, INC., NATHAN LEMINGS AND
23 JANE DOE LEMINGS, husband and wife,
and the marital property thereof, THE LAW
OFFICE OF MC LAUGHLIN &
ASSOCIATES, INC., WESLEY
MC LAUGHLIN AND JANE DOE
MC LAUGHLIN, husband and wife, and the
marital property thereof, DIRECT
SOLUTIONS MARKETING, INC., DOES 1-
100 and ROES 101-200,

Defendants.

Case No. 3:13-cv-5214

**PLAINTIFFS' TRIAL BRIEF
RE: DAMAGES**

24 I.
25 INTRODUCTION

26 The following constitutes Plaintiffs, Allstate Insurance Company, Allstate Property &
27 Casualty Insurance Company, Allstate Indemnity Company and Allstate Fire & Casualty
Insurance Company's ("Allstate") trial brief in regards to the damage portion of this action. As

1 the Court is aware, the Court granted Allstate's motion for partial summary judgment as it
2 pertains to the issue of liability as to all six of the causes of action as detailed in First Amended
3 Complaint. Specifically this Court found that: "There are no genuine issues of material fact to be
4 determined by a fact finder. Defendant Andrew Jacobs ("Jacobs") and Direct Solutions
5 Marketing ("DSM"), are hereby found liable to Allstate under the following causes of action as it
6 relates to the 179 claims at issue in this matter:

7 Count One: Racketeer Influenced and Corrupt Organizations Act 18 U.S.C. §
8 1962(c) – Conduct of Enterprise Through Racketeering

9 Count Two: Racketeer Influenced and Corrupt Organizations Act 18 U.S.C. §
10 1962(d) – Conspiracy

11 Count Three: Washington RICO Violations – RCW 9A.82.100

12 Count Four: Fraud and Intentional Misrepresentation

13 Count Five: Conspiracy to Defraud

14 Count Six: Violation of the Washington Consumer Protection Act, RCW 19.86, *et seq*" (Doc. No. 176)

15 As it pertains to this phase of the trial regarding damages, Allstate is seeking damages
16 solely under the first two causes of action for violations of the RICO statute and for conspiracy.

17 The evidence is undisputed that Jacobs masterminded a complex fraud scheme involving
18 numerous individuals and business entities, where the sole purpose was to fraudulently inflate
19 medical bills and associated personal injury settlements paid by insurance companies such as
20 Allstate. Jacobs improperly and illegally owned and controlled businesses, including two
21 healthcare entities and a law firm, that he used to run up unnecessary medical billings and
22 associated personal injury settlements, which were paid by auto insurance carriers such as
23 Allstate. Jacobs used improper referral and kickback schemes with payoffs to other medical
24 providers, tow truck companies, and collision centers to drum up business for his massage and
25 physical therapy clinics. He also used kickbacks with his own healthcare employees to get
26 referrals to his law firm, in order to keep as much control as possible over the money generated
27 from the improper treatment at his clinics. Jacobs started and used DSM to launder money from

1 his illegally-owned law firm, moving the money both back into his pocket and using it as a slush
2 fund for the illegal kickbacks and payoffs. Allstate was a victim of this fraud scheme, and by this
3 action seeks to recoup money paid on underlying claims pursuant to Allstate auto policies in the
4 amount of \$889,860.39, separate and apart from treble damages, pre-judgment and post-judgment
5 interest and attorneys' fees incurred in litigating this action.

6 **II.**

7 **BACKGROUND FACTS**

8 As noted above, this Court granted Allstate's motion for partial summary judgment as it
9 pertains to the issue of liability as to all six of the causes of action as detailed in First Amended
10 Complaint. Specifically this Court found that: "There are no genuine issues of material fact to be
11 determined by a fact finder. Defendant Andrew Jacobs and Direct Solutions Marketing, are
12 hereby found liable to Allstate under the following causes of action as it relates to the 179 claims
13 at issue in this matter:

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20 Count Five: Conspiracy to Defraud

21 Count Six: Violation of the Washington Consumer Protection Act, RCW 19.86, *et seq*" (Doc. No. 176)

22 In lieu of repeating the 98 Undisputed Material Facts as found in the motion for partial
23 summary judgment (Doc. No. 157-3)¹, that have been deemed establish in light of the ruling on
24 the motion for partial summary judgment, for purposes of simplifying this matter, Allstate intends
25 to refer to those facts herein that specifically support Allstate's request for \$889,860.39 in
26 damages arising out of the violation of Federal RICO and for conspiracy, as opposed to rehashing

27 ¹ This document is attached here as Exhibit A for ease of reference by the Court.

1 testimony pertaining to liability. While Allstate discusses the issue of causation herein, it is
2 solely done to lead to its broader discussion on the issue of damages. Allstate recognizes that
3 causation is an element that was part of the original ruling granting the partial motion for
4 summary judgment. Further, as it pertains to this phase of the trial regarding damages, Allstate is
5 seeking damages solely under the first two causes of action for violations of the RICO statute and
6 for conspiracy.

7 There are three key witnesses Allstate intends to call to support its claim for damages.
8 The first is Joe Rocha. Rocha is an employee of Allstate Insurance Company out of Stockton,
9 California. He is a Senior Special Investigative Unit (SIU) Field Analyst. As an SIU Analyst,
10 his duties involve investigating medical providers and other persons and entities that may have
11 defrauded Allstate through various means. He typically assists in the process of analyzing,
12 evaluating, and ultimately providing a recommendation to his superiors at Allstate whether or not
13 to pursue legal action to recover the monies fraudulently taken from Allstate.

14 Rocha will testify that pursuant to Auto Insurance policies issued to the underlying
15 claimants at issue in this litigation, after review by claims personnel, Allstate paid Tacoma
16 Therapy, Inc. (“TMT”) and/or Tacoma Rehabilitation Therapy, Inc. (“TRT”), directly on Personal
17 Injury Protection (“PIP”) claims when TRT and TMT would submit their invoices to Allstate,
18 either by mail, email, or fax, for reimbursement under the respective Allstate auto policy’s PIP
19 coverage.

20 Rocha will also testify to the fact that separate and apart from PIP coverage, pursuant to
21 Bodily Injury (“BI”) or Underinsured Motorist (“UIM”) coverage in Auto Insurance policies
22 issued by Allstate to underlying claimants at issue in this litigation, attorneys representing the
23 injured party would make a settlement demand upon Allstate based in part on documentation and
24 billing from TMT and TRT. The settlement demand packages, which included the TMT/TRT
25 invoices, were sent to Allstate, either by U.S. Mail, email, or facsimile. After review by claims
26 personnel, Allstate would issue settlement payments to attorneys for the underlying claimants
27 based on the misrepresentations contained therein.

1 Allstate also relied upon the factual representations made by Jacobs and DSM, through
2 invoices and communications submitted directly from TMT and TRT, in evaluating claims made
3 by the underlying claimants pursuant to Allstate policies of insurance. TMT/TRT invoices were
4 sent directly to Allstate, either by U.S. Mail, email, or facsimile. Allstate issued payments on the
5 underlying claims based on the misrepresentations contained in those invoices.

6 Allstate also relied up on the factual representations made by Defendants, through
7 communications received from McLaughlin Law and other law firms involving treatment at TMT
8 and TRT, in evaluating claims made by the underlying claimants pursuant to Allstate policies of
9 insurance. Those communications were sent directly to Allstate, either by U.S. Mail, email, or
10 facsimile. Allstate issued payments on the underlying claims based on the factual
11 misrepresentations.

12 All checks issued by Allstate on the underlying claims were processed from Houston,
13 Texas, and sent to Washington through U.S. Mail. According to Rocha, had Allstate been aware
14 of the fraud being conducted by Defendants, it would not have paid any amount directly to TMT
15 and TRT for the purported services provided to the underlying claimants on PIP claims, nor
16 would Allstate have considered TMT and TRT invoices submitted as part of any settlement
17 demand package in evaluating any BI or UIM claim.

18 Rocha will also testify to the fact that Allstate's total payments to TMT and TRT on the
19 179 underlying claims at issue, and the claimed share of general damages associated with the
20 McLaughlin Law firm, totals \$899,860.39.

21 Further, Jacobs and Melanie Jacobs, through their ownership and control of TMT and
22 TRT, were violating the corporate practice of medicine doctrine. As such, all bills derived from
23 TMT and TRT's operations were illegal, unreasonable, and unnecessary. Allstate's expert, John
24 C. Peick, Esq., will also testify. He is a Washington licensed attorney with substantial experience
25 in healthcare law. Mr. Peick reviewed numerous documents regarding Jacobs' ownership and
26 operation of TMT and TRT. In Mr. Peick's expert opinion, as detailed in his expert report, it is
27 illegal for laypersons to own or operate a healthcare facility. Specifically, licensed healthcare

1 providers may only operate as a professional service corporation (PS), professional limited
2 liability company (PLLC), or limited liability partnership (LLP) in the State of Washington, and
3 unlicensed persons may not be shareholders, directors, or officers in a PS, PLLC, or LLP. Mr.
4 Peick is further of the opinion that healthcare practices operated by laypersons are engaged in the
5 illegal practice of medicine, and therefore the billings of illegal entities are void and
6 unenforceable and subject to recoupment by the payor. It is undisputed that Jacobs was not a
7 licensed massage therapist or physical therapist, and therefore could not own a massage clinic or
8 therapy clinic. Where Jacobs was an owner, controlling officer, and manager of TMT and TRT,
9 the billing for services from these clinics are illegal and unenforceable. Jacobs managed and
10 controlled TMT and TRT up until September 2012, when he sold both entities.

11 Jacobs' illegal and improper medical treatment scheme was quite effective at inflating
12 treatment well beyond what was medically necessary. Allstate's expert, Dr. Edward Dagher, will
13 also testify. He is a Board certified physiatrist, well-versed in assessing physical therapy and
14 massage therapy treatment received by the underlying claimants at issue here. Dr. Dagher
15 reviewed medical records and bills for all 179 of the underlying claims at issue in this case. In his
16 expert opinion, which is detailed in his expert report, Dr. Dagher concluded that the records
17 contained:

- 18 • patterns of pre-determined, pre-programmed, unsubstantiated care that had nothing
19 to do with patient care;
- 20 • exaggerated clinical findings;
- 21 • metastasis of treatment;
- 22 • inappropriate referrals;
- 23 • unreasonable charges;
- 24 • misleading clinical information;
- 25 • reports of physical findings that were not supported within reasonable medical
26 probability;
- 27 • modes of care that were not supported as medically necessary;

- clearly excessive treatments; and
 - unreasonably high charges for treatments.

These findings lead Dr. Dagher to conclude that the course of treatment provided at both TMT and TRT was often exaggerated. In his report, Dr. Dagher goes on to opine about the proper level of treatment that was likely reasonable and necessary for a given underlying claimant. In the vast majority of cases, Dr. Dagher recommended a substantial reduction in the number of treatments rendered at TMT and TRT.

III. **LEGAL ARGUMENT**

A. Allstate Is Entitled To Damages

1. The Racketeering Activities of Jacobs and DSM were the Proximate Cause's Injuries

RICO plaintiffs must demonstrate that they were proximately injured “by reason of” the alleged racketeering activity of the defendant. (18 U.S.C. §1964(c).)² “It is well settled that, to maintain a civil RICO claim predicated on mail [or wire] fraud, a plaintiff must show that the defendants’ alleged misconduct proximately caused the injury” as well as directly caused it. (*Poulos v. Caesars World, Inc.*, 379 F.3d 654, 664 (9th Cir.2004).); *Ove v. Gwinn*, 264 F.3d 817, 825 (9th Cir. 2007).) To demonstrate injury for RICO purposes, plaintiff must show proof of concrete financial loss, and not mere injury to a valuable intangible property interest. Plaintiff also must satisfy the RICO causation element by demonstrating that the defendants’ conduct directly and proximately caused the alleged injury. (*Id.*, at 825.)

Proximate cause is a flexible concept that does not lend itself to “a black-letter rule that will dictate the result in every case.” (*Holmes v. Sec. Investor Prot. Corp.* (U.S. 1992) 503 U.S. 258, 272, fn. 20.) Instead, the Court uses “‘proximate cause’ to label generically the judicial tools used to limit a person’s responsibility for the consequences of that person’s own acts,” (*Id.* at 268)

² As noted above, while Allstate discusses the issue of causation herein, it is solely done to lead to its broader discussion on the issue of damages. Allstate recognizes that causation is an element that was part of the original ruling granting the partial motion for summary judgment.

1 with a particular emphasis on the “demand for some direct relation between the injury asserted
2 and the injurious conduct alleged.” (*Ibid.*; see also *Anza v. Ideal Steel Supply Corp.*, 547 U.S.
3 451, 461 (2006) [“When a court evaluates a RICO claim for proximate causation, the central
4 question it must ask is whether the alleged violation led directly to the plaintiff’s injuries”].)

5 “[Plaintiffs] are not required to show that each individual predicate act caused them an
6 injury, but rather that the pattern of racketeering activity did.” *Just Film, Inc. v. Merch. Servs.,*
7 *Inc.*, 2012 WL 6087210, *12 (N.D. Cal. 2012), *citing Sedima S.P.R.L., v. Imrex Co.*, 473 U.S.
8 479 (1985). Specifically, the *Sedima* Court held as follows:

9 Given that “racketeering activity” consists of no more and no less than
10 commission of a predicate act, § 1961(1), we are initially doubtful about a
11 requirement of a “racketeering injury” separate from the harm from the predicate
12 acts. A reading of the statute belies any such requirement. Section 1964(c)
13 authorizes a private suit by “[a]ny person injured in his business or property by
14 reason of a violation of § 1962.” Section 1962 in turn makes it unlawful for “any
15 person”—not just mobsters—to use money derived from a pattern of racketeering
16 activity to invest in an enterprise, to acquire control of an enterprise through a
17 pattern of racketeering activity, or to conduct an enterprise through a pattern of
18 racketeering activity. §§ 1962(a)–(c). If the defendant engages in a pattern of
19 racketeering activity in a manner forbidden by these provisions, and the
20 racketeering activities injure the plaintiff in his business or property, the plaintiff
21 has a claim under § 1964(c). There is no room in the statutory language for an
22 additional, amorphous “racketeering injury” requirement *Id.* at 495,

23 “[A] plaintiff need not demonstrate injury to himself from each and every predicate act
24 making up the RICO claim.” *Just Film, Inc., supra*, 2012 WL 6087210 at *12, *quoting Corley v.*
25 *Rosewood Care Ctr.*, 388 F.3d 990, 1004 (7th Cir.2004). “Instead, the plaintiff must prove only
26 an injury directly resulting from some or all of the activities comprising the violation.” *Just Film,*
27 *Inc., supra*, 2012 WL 6087210 at *12, *quoting Marshall & Ilsley Trust Co. v. Pate*, 819 F.2d 806,
28 809 (7th Cir.1987); *also citing Deppe v. Trippe*, 863 F.2d 1356, 1366 (7th Cir.1988); *Kearny v.*
Hudson Meadows Urban Renewal Corp., 829 F.2d 1263, 1268 (3d Cir. 1987).

29 In *Deppe, supra*, 863 F.2d at 1366, the Seventh Circuit stated that “no requirement exists
30 that the plaintiff must suffer an injury from two or more predicate acts, or from all of the
31 predicate acts ... Thus, a RICO verdict can be sustained when a pattern of racketeering acts
32 existed, but when only one act caused injury.” Similarly, in *Kearny, supra*, 829 F.2d at 1268, the

1 Third Circuit held that RICO required only injury from any predicate act. The court noted
2 [r]eading into the statute a requirement that a civil plaintiff prove injury from the entire pattern
3 rather than from any predicate act would, we believe, be inconsistent with the core congressional
4 purposes behind its enactment. For example, if an organized crime group were to operate a
5 protection racket, extorting money from each merchant in a community, then each merchant's
6 injury would be separate, and therefore... none could recover." *Id.*

7 This Court has already found, based on the ruling on the motion for partial summary
8 judgment that there was a clear pattern of racketeering activity. Further, this Court determined
9 that racketeering activity caused damage to Allstate in the form of paying higher settlements of
10 the claims being made against its insureds.

11 As detailed above, all of the medical bills for services from TMT and TRT arise from
12 illegal entities operated in violation of the corporate practice of medicine and the Washington
13 Professional Service Corporation Act, RCW 18.100, *et seq.*. As such, all bills from both TMT
14 and TRT that were submitted to Allstate and for which Allstate issued a payment, either directly
15 or through third party settlements, were not valid and collectible claims and are subject to
16 recoupment by the payor. (*see Deaton v. Lawson*, 40 Wash. 486, 490, 82 P. 879 (1905);
17 *Sherwood v. Wise*, 132 Wash. 295, 300-301, 232 P. 309 (1925); *State ex rel Standard Optical v.*
18 *Superior Court*, 17 Wash.2d 323, 334-335, 135 P.2d 839 (1943); *State v. Boren*, 36 Wash.2d 522,
19 531-32, 219 P.2d 566 (1950); *Morelli v. Ehsan*, 110 Wash.2d 555, 560-562, 756 P.2d 129 (1988);
20 *Columbia Physical Therapy v. Benon Franklin Orthopedic Associates, PLLC, et al*, 168 Wash.2d
21 421, 430-31, 228 P.3d 1260 (2010).)

22 Allstate has never pursued a private cause of action for violations of the corporate practice
23 of medicine doctrine and the Washington Professional Service Corporation Act. Rather, Allstate
24 is relying upon the illegal and unethical conduct that gives rise to these violations as evidence of a
25 major portion of the racketeering scheme devised by Jacobs and DSM and perpetrated upon
26 Allstate. Allstate is aware of this Court's ruling in *State Farm Insurance Co. v. Jacobs*, Case No.
27 3:14-CV-05512, and notes that State Farm's causes of action were based upon unjust enrichment

1 and declaratory relief. Allstate's position is factually, procedurally, and legally distinguishable,
2 as Allstate is seeking recovery for damages only through the Federal RICO statutes. The heart of
3 the racketeering activity which supports causation for damages under Federal RICO is the very
4 fact that TMT and TRT were completely illegal operations under the law, which makes any
5 invoice for services ultimately paid by Allstate invalid and uncollectible. The public policy of
6 this state is clear that an illegally operating business, such as TMT and TRT, should not be able to
7 profit in any way from its operations, particularly in the context of the massive fraudulent scheme
8 driven by these operations created for the sole purpose of bilking monies from an insurance
9 carrier all in violation of Federal RICO statutes. To put a slight twist on a phrase from criminal
10 law, Jacobs and DSM should not be allowed to benefit through collecting the fruit of a poisonous
11 tree – the ill-gotten gains from the fraudulent and illegal scheme.

12 It is important to note that Allstate is not seeking monies back from any patient or the duly
13 licensed massage and physical therapist employees. It is Jacobs and DSM that helped set the
14 framework for a fraudulent operation that was designed to bilk as much as possible from Allstate,
15 all driven by completely illegal operations that could never issue bills to begin with. When the
16 ultimate settlement amount was paid by Allstate, it was TMT and TRT that was paid in full, with
17 the patients in the end not receiving their proportionate share. This complete fraud should result
18 in recoupment of the payments made for all bills from both TMT and TRT that were submitted to
19 Allstate and for which Allstate issued a payment, either directly or through third party
20 settlements.

21 Moreover, as the Court will hear, Dr. Dagher has concluded that the vast majority of the
22 179 underlying claimants receive treatment far beyond what was medically necessary. Dr.
23 Dagher will provide his expert opinion on each claim as to what the appropriate level of care
24 would have been had the claimants been treated based on clinical necessity. Because Dr. Dagher
25 has concluded the level of treatment was inflated, Allstate was necessarily damaged where it paid
26 beyond what was medically necessary for these 179 claimants.

27 As will be detailed in the testimony of witnesses above, Allstate relied on the billings

1 from TMT and TRT, not knowing that they were illegal operations under the law as a layperson
2 in Jacobs owned and controlled both entities. As is clear under the law, it is illegal for a
3 layperson to own or operate a healthcare facility. Thus, all billings coming out of TMT and TRT
4 were illegal, unreasonable and unnecessary.

5 **2. *Damages For The Illegal and Improper Medical Treatment***

6 The measure of civil damages under RICO is the harm caused by the predicate acts
7 constituting the illegal pattern. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497, 105 S.Ct. 3275,
8 3285, 87 L.Ed.2d 346 (1985). Where the plaintiff alleges each element of the violation, the
9 compensable injury necessarily is the harm caused by predicate acts sufficiently related to
10 constitute a pattern, for the essence of the violation is the commission of those acts in connection
11 with the conduct of an enterprise. Those acts are, when committed in the circumstances
12 delineated in § 1962(c), “an activity which RICO was designed to deter.” Any recoverable
13 damages occurring by reason of a violation of § 1962(c) will flow from the commission of the
14 predicate acts. *Id.* at 497.

15 Federal courts have held that where the injury is established, as it has been here through
16 the partial motion for summary judgment, *damages need not be demonstrated with precision*.
17 *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, 248 F.R.D. 363, 371 (D.
18 Mass. 2008). In relating RICO cases to antitrust cases, the Court concluded, where the tort itself
19 is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it
20 will be enough if the evidence shows the extent of damage as a matter of just and reasonable
21 inference, although the result is only an approximate. *Id.* at 371.

22 Further, the holding in *In re Neurontin Marketing and Sales Practices Litigation*, 712 F.3d
23 21 (1st Cir. 2013) is important here. Kaiser brought an action against Pfizer for RICO violations
24 and California Unfair Competition law violations arising from Pfizer’s efforts to unlawfully
25 market prescription anticonvulsant drug, Neurontin, for off-label uses. After a five week trial the
26 jury found that Kaiser proved that Pfizer violated RICO with respect to its promotion of
27 Neurontin for off label uses and that it caused Kaiser injury. The jury awarded Kaiser damages.

1 Pfizer argued that the district court erred in its calculation of damages because Kaiser's
2 medical expert used a list of alternatives to Neurontin, but no expert testified that the drugs on the
3 list were at least as effective or as well tolerated as Neurontin. Further Pfzier argued that there
4 was no evidence that doctors would have prescribed those lower-cost alternative drugs but for
5 Pfzier's conduct. Those doctors may have prescribed more expensive drugs instead of Neurontin.
6 Pfizer claims that these assumptions make the estimation of damages too speculative. The Court
7 rejected these assertions:

8 The burden of proof as to damages is lower than that for causation, and the
9 factfinder is afforded a great deal of freedom to estimate damages where the
10 defendants, as here, has created the risk of uncertainty. [Citation omitted] The
11 damage inquiry does not allow a defendant to benefit from the scope of its
12 wrongdoing; this is why "(e)ven 'speculation has its place in estimating damages
13 and doubts should be resolved against the wrongdoer. [Citations omitted] *Id.* at
14 49-50.

15 The Court found that because Kaiser met the causation requirements with legally
16 sufficient evidence and proved that it suffered economic injury from Pfzier's fraudulent scheme,
17 the Court held that, "On [the damage] phase of the case the plaintiff has a more relaxed burden of
18 proof..., especially if as in this case the defendants' conduct has made it difficult for the plaintiff
19 to prove the precise extent of his damages." *Id.* at 49. The Court held that "Under such
20 circumstances, damages do not need to be proven 'with mathematical certainty, provided an
21 award has a rational basis in the evidence.' The Court concluded "Otherwise 'the more grievous
22 the wrong done, the less likelihood there would be of a recovery.'" *Id.* at 49; see *Bigelow v. RKO*
23 *Radio Pictures*, 327 U.S. 251, 265, 66 S.Ct. 574, 580 (1946); *Living Designs, Inc. v. E.I. Dupont*
24 *de Nemours and Co.*, 431 F.3d 353, 367 (9th Cir. 2005) [Federal RICO]; *Southern Wine & Spirits*
25 *of Nevada v. Mountain Valley Spring Co., LLC*, 646 F.3d 526, 536 (8th Cir. 2011) [An expert's
26 opinion regarding the amount of damages requires only an intelligent estimate.]; *Holland*
27 *Livestock Ranch v. United States*, 655 F.2d 1002, 1006 (9th Cir. 1981); *Hunt Foods, Inc. v.*
Phillips, 248 F.2d 23, 33 (9th Cir. 1957)

28 The Court added that the district court did not err in accepting Kaiser's doctor's
29 methodology for calculating damages. In fact, "Pfizer never offered an alternative; it did not

1 provide its own list of substitute drugs, nor did it offer testimony about the Kaiser list's exclusion
2 of lamotrigine (the only drug Pfizer names on appeal as improperly excluded." *Id.* at 50.

3 As established, the sole purpose of the massive illegal scheme here was to fraudulently
4 inflate medical bills and associated personal injury settlements paid by insurance companies such
5 as Allstate. As part of that racketeering activity, Jacobs improperly and illegally owned and
6 controlled businesses, including two healthcare entities and a law firm, that he used to run up
7 unnecessary medical billings and associated personal injury settlements, which were paid by auto
8 insurance carriers such as Allstate. As Joe Rocha will testify, Allstate paid invoices of TRT and
9 TMT for services performed by an illegal operations under Washington law. Allstate seeks total
10 recoupment of all amounts paid, which total \$899,860.39. This amount reflects all invoices paid
11 by Allstate to TMT and TRT for their proportionate share of all settlements.

12 **B. *Allstate is Entitled to Treble Damages***

13 Allstate is also entitled to treble damages under the Federal RICO causes of action.
14 Section 1964(c) and case law clearly indicate that treble damages are mandatory to a prevailing
15 plaintiff on the Federal RICO causes of action. The treble damages provision of RICO was
16 designed to protect those whose businesses have been infiltrated and damaged by the offenses §
17 1962 proscribes. *Noland v. Gurley*, 566 F. Supp. 210, 218 (D. Colo. 1983); *Van Schaick v.*
18 *Church of Scientology of California, Inc.*, 535 F.Supp. 1125, 1136 (Mass.1982).

19 When a plaintiff prevails on Federal RICO claims, under § 1964(c) treble damages are
20 mandatory. The statute states that where the plaintiff is "injured in his business or property" then
21 he "shall recover three-fold the damages he sustains" in addition to costs and attorney fees. 18
22 U.S.C. § 1964(c) (Emphasis added.). The use of the word "shall" in the statute clearly indicates
23 that the awarding treble damages is not discretionary.

24 Federal Courts have routinely interpreted the language of 1964(c) to mean that treble
25 damages are mandatory.

26 It is clear that trial courts and juries are at no liberty under RICO
27 to award any amount less than treble damages. The plain language

1 of that statute instructs that injured persons “shall recover” treble
2 damages and costs and attorneys fees. One court thus has observed
3 that civil RICO ‘requires’ that the successful plaintiff be awarded
4 treble damages.

5 *Genty v. Resolution Trust Corp.*, 937 F.2d 899, 914 (3d Cir. 1991), *citing Cullen v.*
6 *Margiotta*, 811 F.2d 698, 713 (2nd Cir.), *cert. denied*, 483 U.S. 1021, 107 S.Ct. 3266, 97 L.Ed.2d
7 764 (1987) [“civil RICO requires that a successful plaintiff be awarded treble damages.”]; *see*
8 *Allstate Ins. Co. v. Nassiri*, No. 2:08-CV-369 JCM GWF, 2013 WL 3716444, at *1 (D. Nev.
9 2013) [Having reviewed 18 U.S.C. § 1964©, the court finds that it is required to treble damages.];
10 *Resolution Trust Corp. v. S & K Chevrolet*, 868 F. Supp. 1047, 1062 (C.D. Ill. 1994) [“[u]nder
11 RICO, treble damages are mandatorily assessed upon the finding of liability.”]; *Allstate Ins. Co.*
12 *v. Polack*, CV 08-0565 ADS ETB, 2012 WL 4489282 (E.D.N.Y. 2012) report and
13 recommendation adopted, 08-CV-565 ADS ETB, 2012 WL 4490775 (E.D.N.Y. 2012) [“[w]here
14 a plaintiff successfully obtains a judgment of civil liability under RICO, an award of treble
15 damages is mandatory.”]; *Allstate Ins. Co. v. Lyons*, 843 F. Supp. 2d 358, 367 (E.D.N.Y. 2012).

16 As stated succinctly in the U.S. District Court for the Central District of California: “[t]he
17 Court agrees that it must treble the \$613,350 in compensatory damages because of Monex's RICO
18 claim.” *Monex Deposit Co. v. Gilliam*, SACV09287JVSANX, 2010 WL 2380873, *3 (C.D. Cal.
19 May 24, 2010), citing 18 U.S.C. § 1964(c) *Genty v. Resolution Trust Corp.*, 937 F.2d 899, 914
20 (3d Cir.1991); *Jones v. Phipps*, 39 F.3d 158, 161 (7th Cir.1994).

21 Thus, if this Court finds that Allstate is entitled to damages under the Federal RICO
22 1962(c) and 1962(d) causes of action, the compensatory damages awarded by this Court are
23 required to be trebled by the Court under the Federal RICO causes of action. Accordingly,
24 Allstate seeks a judgment awarding \$2,699,581.17 for the Federal RICO causes of action, treble
25 the \$899,860.39 of compensatory damages requested to be awarded by this Court.

26 **C. *Allstate Requests An Award of Prejudgment and Post-Judgment Interest***

27 An award of prejudgment interest on Allstate's RICO claim is within the Court's sound

1 discretion. See *Home Sav. Bank, F.S.B. by Resolution Trust Corp. v. Gillam*, 952 F.2d 1152, 1165
2 (9th Cir.1991) (“The award of prejudgment interest in a case arising under federal law rests
3 within the sound discretion of the court.”) (citation omitted); see also *Aetna Cas. Sur. Co. v. P &*
4 *B Autobody*, 43 F.3d 1546, 1571 (1st Cir.1994) (decision as to whether to award prejudgment
5 interest under RICO is left to district court's discretion); *Abou-Khadra v. Mahshie*, 4 F.3d 1071,
6 1084 (2d Cir.1993) (RICO statute does not contain provision barring prejudgment interest, and
7 any such award is discretionary); *Alexander v. Incway Corp.*, No. CV 11-8851 DSF VBKX, 2013
8 WL 5603932, at *21 (C.D. Cal. 2013).

9 As for post-judgment interest, “Section [28 U.S.C.] 1961 provides for the mandatory
10 award of post-judgment interest on any money judgment in a civil case recovered in a district
11 court.” *Planned Parenthood of Columbia/Willamette Inc. v. Am. Coalition of Life Activities*, 518
12 F.3d 1013, 1017 (9th Cir.2008) (citations and quotations omitted). Post judgment interest runs
13 from the date of a judgment when the damages were supported by the evidence and meaningfully
14 ascertained. Allstate is entitled to post-judgment interest on the damages awarded from the date
15 of judgment at the current statutory rate pursuant to 28 U.S.C. § 1961(a).³ See *Alexander v.*
16 *Incway Corp.*, No. CV 11-8851 DSF VBKX, 2013 WL 5603932, at *22 (C.D. Cal. 2013)

17 Therefore, Allstate requests pre-judgment interest running from the date of the filing of
18 the original complaint on March 21, 2013. Pre-judgment interest is certainly warranted
19 considering that Jacobs and DSM have made no efforts to contest liability as alleged in the
20 original complaint. It is undisputed that Jacobs masterminded a complex fraud scheme involving
21 illegal businesses that led to wholly improper medical treatment. Since the allegations found
22 from the date of the original complaint were ultimately uncontested by Jacobs and DSM,
23 prejudgment interest should be ordered.

24

³ 28 U.S.C. § 1961(a) provides in relevant part as follows: “Interest shall be allowed on any
25 money judgment in a civil case recovered in a district court. Execution therefor may be levied by
26 the marshal, in any case where, by the law of the State in which such court is held, execution may
27 be levied for interest on judgments recovered in the courts of the State. Such interest shall be
calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year
constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve
System, for the calendar week preceding the date of the judgment.”

1
2 **IV.**
3 **CONCLUSION**

4
5 Based on the above, Allstate requests that this Court award compensatory damages in the
6 amount \$899,860.39 as it pertains to Counts one and two of the First Amended Complaint.
7
8 Allstate further requests that this Court grant the request to treble those damages to the amount of
9 \$2,699,581.17. In addition, the Allstate asks this Court to award pre-judgment interest from the
10 date of the original complaint filed on March 21, 2013, at the current statutory rate pursuant to 28
11 U.S.C. § 1961(a), on the amount of the trebled damage award, and that Allstate is entitled to post-
12 judgment interest on the total amount of the judgment, which would include the trebled damage
13 award and pre-judgment interest.

14 DATED: September 21, 2015

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1
2 **CERTIFICATE OF SERVICE**
3

4 I certify under penalty of perjury under the laws of the state of Washington that the
5 following is true and correct.
6

7 I am over the age of 18, competent to testify, not a party to this action, and employed by
8 the firm of McCormick, Barstow, Sheppard, Wayte & Carruth LLP. On the date set forth below,
9 I served the document(s) to which this is attached in the manner noted, on the following
10 person(s):
11

12 Andrew Jacobs
13 1228 La Cienega #303
14 W. Hollywood, CA 90069
15 andy_jacobs1@hotmail.com

16 *Pro Se*
17 *Via E-Mail and ECF*

18 SIGNED at Seattle, Washington, this 21st day of September, 2015.
19

20 _____
21 /s Justin K. Fodness
22 Justin K. Fodness
23